IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.572 of 2001

Decided on : April 30, 2009

Subhash

... Petitioner

VERSUS

The State of Haryana, etc.

... Respondents

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.V.D.Sharma,
Advocate for the petitioner.

Ms.Rajat Goyal, Assistant Advocate General
Haryana.

Mr.Munish Garg, Advocate.

A.N.JINDAL, J.-

Challenge in the present petition filed by Subhash – complainant is to the judgment dated 20.10.2000 passed by Additional Sessions Judge, Sirsa, whereby, accused/ respondents Raju alias Raj Kumar, Anand Sharma, Pappu alias Ramesh Kumar, Ram Kumar, Tony alias Anil Bishnoi and Lila Dhar (herein referred as `respondents') were acquitted of the charge under Sections 148, 449, 302/149 of the Indian Penal Code.

A brief resume of facts is that on 20.5.1997, on receiving an information about arrival of dead body of Hoshiar Singh in the hospital,

Inspector Balbir Singh along with other police officials reached the hospital chowk, where he came across the complainant, who got recorded his statement to the effect that Hoshiar Singh (deceased) his eldest brother, was engaged in sale of milk and milk products. On 19.5.1997, they had gone to attend the marriage of the daughter of Shri Chandu Saini. The respondents Lila Dhar Saini and Tony alias Anil Bishnoi, Advocates were also present there and were making video movie of the females attending the marriage party. Hoshiar Singh objected to it, which resulted into exchange of hot words between him and the accused. Hoshiar Singh smashed the rear screen of the gypsy owned by accused. Lila Dhar Saini left the place quietly, but developed a grudge against Hoshiar Singh. On the next day i.e. 20.5.1997, at about 9.30 p.m, the complainant Subhash was standing at the corner of Gali Golchawali in the area of Nohria Bazar, Sirsa. Ramesh son of Khayali, Deepak son of Om Parkash and Hoshiar Singh reached there on a scooter and started talking with each other. In the meantime, a gypsy bearing Reg.No.DL-2C/8088 arrived there at enormous speed and accused Lila Dhar Saini, Tony and Anand Sharma alighted from it. Another jeep carrying accused Raju, Ram Kumar and Pappu also arrived there. Lila Dhar Saini was armed with a rifle, Tony was armed with a pistol, Anand Sharma was armed with a gun and Ram Kumar was armed with a sword, whereas, the other two accused persons were empty handed. All the accused exhorted to teach a lesson to Hoshiar Singh for the unsavory and unpleasant incident of the previous evening. Hoshiar Singh sensing the imminent danger to his life, entered the house of

Shubh Karan Soni, finding its main entrance lying open. The accused chased him and accused Lila Dhar Saini placed the barrel of his rifle on the chest of Hoshiar Singh and fired the fatal shot. Thereafter, all the accused left the scene. The complainant shifted his brother Hoshiar Singh to the hospital, where he was declared `brought dead'.

On the aforesaid version of the complainant, a case was registered, inquest proceedings were conducted on the dead body of Hoshiar Singh and a medical board conducted the autopsy on the dead body. After completing the necessary formalities and recording the statements of the witnesses, the police filed charge report in the court.

The accused were charge-sheeted for the alleged commission of offences punishable under Sections 148, 302 read with Section 149 of the Indian Penal Code and accused Lila Dhar was also charge-sheeted under Section 302 IPC, to which all the accused pleaded not guilty and claimed trial.

The prosecution in order to bring home the charge, examined Ramesh Kumar, Reader to JMIC, Bahadurgarh (PW1), Sumer Singh, Reader to SDJM, Fatehabad (PW2), Ved Parkash, Ahlmad (PW3), Suresh Kumar (PW4), Inderjit, draftsman (PW5), MHC Sita Ram (PW6), HC Amar Nath (PW7), Vijay Kumar (PW8), Dr.Joginder Singh (PW9), Constable Om Parkash (PW10), Constable Rajinder Singh (PW11), Ravinder Kumar, Reader to JMIC, Hissar (PW12), Sub-Inspector Maninder Singh (PW13), Beant Singh (PW14), Subhash Chander (PW15), Constable Shanker Lal (PW16) and Inspector Balbir Singh (PW17).

In their statements under Section 313 of the Code of Criminal Procedure, all the accused denied the allegations. Accused Lila Dhar Saini further stated that he has strained relations with Rajinder, Municipal Commissioner and is very close to complainant Subhash. He further alleged that both of them belong to opposite political camps and because of the conflicting interests, Rajinder got him implicated in this false case as also his real brother-in-law Ram Kumar, his real nephew Pappu and his friends and supporters, namely; Anand, Toni and Raju. The other five accused also took the similar stand. In defence, they examined Ramesh Kumar (DW1). However, the trial resulted in acquittal. Hence, the present revision.

Arguments heard. Records perused.

On scrutiny of the evidence led on record, it transpires that the testimony of complainant Subhash (PW15), an alleged eye-witness, does not inspire the confidence of the Court for want of corroboration from the testimony of Inspector Balbir Singh (PW17) or even from the medical evidence on record. Presence of the complainant at the place of occurrence is doubtful. Absolutely, there is no evidence on the record about involvement of the respondents in the commission of the crime. The presence of Deepak and Ramesh Kumar (DW1) is admitted by the prosecution and this fact is also proved from the medical memo (Ex.PL), therefore, there are no reasons to disbelieve the statement of Ramesh Kumar (DW1) that the complainant was not present at the scene of occurrence. The medical evidence is contradictory to the ocular version. The doctor detected a sharp cut on the inner side of the pent below the

belt area. He also detected a sharp cut on the right side of the back of the shirt of the deceased. These cuts had nothing to do with the injuries caused by the fire arm. The doctor has very specifically stated that both the cuts were by the tip of the weapon, like naked sword and could result fatal, if the deceased had kept the naked sword on his back under his shirt and pent and pulled it out in a bid to save himself. This version is in consonance with the defence version. The accused had maintained in their defence that the deceased Hoshiar Singh was a desperate man, who was got booked by the respondents for a murderous attack on Satnam Singh and he was also booked for attacking one Puran Chand. The deceased was habitual of keeping a sword under his shirt, which was stuck in the belt area. Thus, it seems that he pulled the sword out, after seeing the assailants. The said sword did not belong to Ram Kumar. The Investigating Officer did not pick up the finger prints on the sword for the reasons best known to him. Though the prosecution cited some eye-witnesses in the case, yet none of them was examined to give the eye-witness account. The presence of alleged eye witness Subhash (brother of the deceased), who was examined as PW15, is doubtful. The deceased admittedly was a criminal as admitted by complainant Subhash himself. Resultantly, it could be inferred that the prosecution has not come with the true version and has suppressed the genesis of occurrence, and that the defence version is believable.

The law is well-settled that while hearing a revision/appeal against an order of acquittal, interference would be called for only when the judgment is palpably perverse and is based on a misreading of the

evidence. However, it is equally settled that where two views are possible, then the one taken by the Trial Court should not be disturbed.

As a result of the above discussion, the revision petition fails and the same is hereby dismissed.

April 30, 2009 (A.N.JINDAL)
`gian' JUDGE